

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Case No 1:20-CR-183-RJJ

Plaintiff,

HON. ROBERT J. JONKER

V

ADAM DEAN FOX,

Defendant.

DEFENDANT ADAM FOX'S MOTION AND BRIEF FOR PRE-TRIAL CONFERENCE
REGARDING USE OF SURVEILLANCE AUDIO BY PARTIES AT TRIAL

NOW COMES the Defendant, Adam Dean Fox, by and through counsel, Christopher M. Gibbons, of the law offices of GIBBONS & BOER, and for his Motion for a Pre-Trial Conference Regarding the Use of Surveillance Audio by Parties at Trial, brought pursuant to FRCP 17.1, states as follows:

1. The parties have engaged in the discovery process, and the Government has disclosed more than 1000 hours of audio surveillance related to the matters alleged in the Superseding Indictment.
2. The surveillance audio is material and relevant to both the prosecution and defense at the trial that is scheduled to occur in this case on October 12, 2021.
3. Defense counsel is actively working to process the audio surveillance produced by the Government in support of the defense effort for intended use at trial.
4. Assistant United States Attorney assigned to this case, Nils R. Kessler, has indicated an intention to produce and publish to audio recordings in the Government's case-in-chief.

5. The defense of Adam Fox will likely require the publication or the use of the surveillance audio in its case-in-chief, or for purposes of impeachment on cross-examination of the Government's witnesses.
6. In preparation for trial, instant counsel has conferred with Mr. Kessler regarding the use of the audio, the preparation of transcripts, and the like to solidify a predictable and effective use of the parties' use audio evidence at trial. Counsel have reached some understanding and mutual expectancy on the issues to the use of audio and associated transcripts, but an agreement of counsel is not binding on this Court.
7. Ultimately, the Court will be the arbiter concerning the use of the audio, the volume of audio to be published to the jury, and quality of the transcripts that will allowed to be used for varying purposes at trial.
8. Counsel desires that the trial proceed in an orderly manner and issues concerning accuracy of transcription, identification of clips and excerpts be consistent and meet the requirements of producing and preserving an accurate record. Counsel wishes to resolve these concerns sufficiently in advance of trial to avoid delay should the issues arise at trial, and to avoid preparing the exhibits in a manner such that the work product would not be useable at trial, which may result in an untimely delay, or render otherwise beneficial evidence unavailable at trial.
9. FRCrP 17.1 allows a party to move for one or more pretrial conference to promote a fair and expeditious trial.

WHEREFORE, Adam D. Fox requests that this Court schedule and entertain the parties with respect to the issues raised herein as soon as is practicable.

Dated: August 16, 2021.

By: GIBBONS & BOER

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